

State of California

Board of Equalization  
Legal Division

## Memorandum

To : Mr. Robert M. Frank  
Environmental Fees Section

Date: June 5, 1992

From : Janet Vining  
Tax Counsel

Subject: TAXABILITY OF ASPHALT USED IN A SOLID WASTE LANDFILL

Larry Augusta asked me to respond to your April 7, 1992 memorandum concerning the taxability of asphalt used in a solid waste landfill. For the reasons set forth below, we conclude that the solid waste disposal fees imposed by Public Resources code Sections 46801 and 48000 do not apply to asphalt which it utilized by a landfill to construct wet weather pads so that the landfill can remain open during the rainy season.

Throughout the year, many landfills direct large amounts of asphalt to certain sections of the landfills, where the asphalt is worked into the top layers of waste to provide a firmer surface. Waste is deposited on this area of a landfill during the rainy season when other sections of the landfill are slippery and muddy and not accessible to large equipment. The landfill must utilize the asphalt or wet weather pads in order to stay open for business as required by local law. If the landfill does not receive the quantity of asphalt needed to construct the wet weather pads, it may have to waive its "tipping fee" or purchase used asphalt. The waste disposed of on the wet weather pad may be moved to other areas of the landfill at a later date, or be covered up in place along with the pad.

Sections 46801 and 48000 of the Public Resources Code impose fees on all solid waste disposed of at a disposal site. The definition of "solid waste" in Public Resources Code Section 40191 is quite broad and easily includes the used asphalt at issue.

We have previously determined that the solid waste disposal fees do not apply to material placed on a landfill as

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intermediate or final cover in compliance with the Integrated Waste Management Board's regulations, even though such material comes within the definition of "solid waste". Material used as cover is not thrown away or discarded, but is applied to the landfill for a specific purpose, i.e., to control the spread of flies, rodents, fires, odor and surface water runoff. Although some of the cover materials may contain elements that would be considered waste in another context, they are not waste when applied in an approved use as cover.

The use of asphalt to construct wet weather pads at a landfill is similar to the use of waste materials as cover. The asphalt is dedicated to a specific area, where it serves a special purpose. When the landfill cannot obtain sufficient quantities of asphalt to construct the pads, it must either waive its "tipping fee" or make an outright purchase of used asphalt. Finally, the landfill uses the asphalt to construct wet weather pads in order to comply with local requirements that the landfill remains open for business a certain number of days each year.

Given the similarities between cover and asphalt, we conclude that asphalt which is utilized by a landfill in the construction of wet weather pads is not subject to the solid waste disposal fees imposed by Public Resources Code Section 46801 and 48000 and should not be included in the weight upon which the fees are based.

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cc: Mr. E. V. Anderson  
Mr. David McKillip  
Mr. Frank Love  
Mr. Larry Augusta  
Mr. Robert Conheim, Chief Counsel  
Integrated Waste Management Board